

104TH CONGRESS  
1ST SESSION

# H. R. 2323

To amend the Solid Waste Disposal Act to authorize State and local governments to prohibit or restrict the receipt of out-of-State municipal solid waste, to authorize local governments to control and direct the movement of certain solid waste, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1995

Mr. OXLEY (for himself, Mr. GILLMOR, Mr. GREENWOOD, Mr. CLINGER, Mr. HAMILTON, Mr. PORTMAN, Ms. KAPTUR, and Mrs. JOHNSON of Connecticut) introduced the following bill; which was referred to the Committee on Commerce

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## A BILL

To amend the Solid Waste Disposal Act to authorize State and local governments to prohibit or restrict the receipt of out-of-State municipal solid waste, to authorize local governments to control and direct the movement of certain solid waste, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “State and Local Gov-  
5       ernment Interstate Waste Control Act of 1995”.

1       **TITLE I—INTERSTATE WASTE**

2       **SEC. 101. INTERSTATE TRANSPORTATION AND DISPOSAL**  
3               **OF MUNICIPAL SOLID WASTE.**

4           (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-  
5       posal Act (42 U.S.C. 6941 et seq.) is amended by adding  
6       after section 4010 the following new section:

7       **“SEC. 4011. RECEIPT AND DISPOSAL OF OUT-OF-STATE MU-**  
8               **NICIPAL SOLID WASTE.**

9           “(a) PRESUMPTIVE BAN ON RECEIPT OF OUT-OF-  
10       STATE WASTE.—No landfill or incinerator may receive  
11       any out-of-State municipal solid waste for disposal or in-  
12       cineration unless the waste is received pursuant to—

13               “(1) a host community agreement in accordance  
14       with subsection (b) or (c), or

15               “(2) an exemption under subsection (d).

16       “(b) EXISTING HOST COMMUNITY AGREEMENTS.—

17               “(1) EXEMPTION FROM BAN.—Out-of-State  
18       municipal solid waste may be received at a landfill  
19       or incinerator for disposal or incineration pursuant  
20       to a host community agreement entered into before  
21       the enactment of this section if—

22               “(A) the agreement specifically authorizes  
23       the owner or operator to accept, at the landfill  
24       or incinerator, out-of-State municipal solid  
25       waste; and

1           “(B) the owner or operator complies with  
2           all of the terms and conditions of the host com-  
3           munity agreement.

4           The owner or operator shall provide a copy of the  
5           host community agreement, within 90 days after the  
6           enactment of this Act, to the State and affected  
7           local government and make such a copy available for  
8           inspection by the public in the affected local commu-  
9           nity.

10           “(2) REQUIREMENT FOR COMPLIANCE WITH  
11           CERTAIN REQUIREMENTS.—The exemption under  
12           this subsection shall not apply to a landfill or incin-  
13           erator in operation on the date of the enactment of  
14           this section if the State determines that the landfill  
15           or incinerator was not in compliance as of such date  
16           with applicable Federal and State laws and regula-  
17           tions relating to facility operation and design and—

18           “(A) in the case of landfills, facility loca-  
19           tion standards, leachate collection standards,  
20           groundwater monitoring standards, and stand-  
21           ards for financial assurance and for closure and  
22           post-closure and corrective action, and

23           “(B) in the case of incinerators, the appli-  
24           cable requirements of section 120 of the Clean  
25           Air Act (42 U.S.C. 7429),

1 and that such noncompliance constitutes a threat to  
2 human health or the environment.

3 “(c) NEW HOST COMMUNITY AGREEMENTS.—

4 “(1) EXEMPTION FROM BAN.—Out-of-State  
5 municipal solid waste may be received at a landfill  
6 or incinerator for disposal or incineration pursuant  
7 to a host community agreement entered into on or  
8 after the enactment of this section (hereinafter in  
9 this section referred to as a “new host community  
10 agreement) if the agreement specifically authorizes  
11 the receipt of such waste and meets the require-  
12 ments of paragraphs (2) through (5) of this sub-  
13 section.

14 “(2) REQUIREMENTS FOR AUTHORIZATION.—

15 An authorization to receive out-of-State municipal  
16 waste pursuant to a new host community agreement  
17 shall be granted by formal action at a meeting; be  
18 recorded in writing in the official record of the meet-  
19 ing; and remain in effect according to its terms.  
20 Such authorization may specify terms and condi-  
21 tions, including an amount of out-of-State waste  
22 that an owner or operator may receive and the dura-  
23 tion of the authorization.

24 “(3) INFORMATION.—Prior to seeking an au-  
25 thorization to receive out-of-State municipal solid

1 waste pursuant to a new host community agreement  
2 under this subsection, the owner or operator of the  
3 facility seeking such authorization shall provide (and  
4 make readily available to the State, each contiguous  
5 local government and Indian tribe, and any other in-  
6 terested person for inspection and copying) each of  
7 the following items of information:

8 “(A) A brief description of the facility, in-  
9 cluding, with respect to both the facility and  
10 any planned expansion of the facility, the size,  
11 ultimate waste capacity, and the anticipated  
12 monthly and yearly quantities of waste to be  
13 handled. Such quantities shall be expressed in  
14 terms of volume.

15 “(B) A map of the facility site indicating  
16 location in relation to the local road system and  
17 topography and general hydrogeological fea-  
18 tures. The map shall indicate any buffer zones  
19 to be acquired by the owner or operator as well  
20 as all facility units.

21 “(C) A description of the then current en-  
22 vironmental characteristics of the site, a de-  
23 scription of ground water use in the area, and  
24 a discussion of alterations that may be neces-  
25 sitated by, or occur as a result of, the facility.

1 The description of groundwater use shall in-  
2 clude identification of private wells and public  
3 drinking water sources.

4 “(D) A description of environmental con-  
5 trols typically required to be used on the site  
6 (pursuant to permit requirements), including  
7 run on or run off management, or both, air pol-  
8 lution control devices, source separation proce-  
9 dures (if any), methane monitoring and control,  
10 landfill covers, liners or leachate collection sys-  
11 tems, and monitoring programs. In addition,  
12 the description shall include a description of  
13 any waste residuals generated by the facility,  
14 including leachate or ash, and the planned man-  
15 agement of the residuals.

16 “(E) A description of site access controls  
17 to be employed, and roadway improvements to  
18 be made, by the owner or operator, and an esti-  
19 mate of the timing and extent of increased local  
20 truck traffic.

21 “(F) A list of all required Federal, State,  
22 and local permits.

23 “(G) Estimates of the personnel require-  
24 ments of the facility, including information re-  
25 garding the probable skill and education levels

1 required for jobs at the facility. To the extent  
2 practicable, the information shall distinguish  
3 between employment statistics for  
4 preoperational and postoperational levels.

5 “(H) Any information that is required by  
6 State or Federal law to be provided with re-  
7 spect to any violations of environmental laws  
8 (including regulations) by the owner, the opera-  
9 tor, and any subsidiary of the owner or opera-  
10 tor, the disposition of enforcement proceedings  
11 taken with respect to the violations, and correc-  
12 tive action and rehabilitation measures taken as  
13 a result of the proceedings.

14 “(I) Any information that is required by  
15 State or Federal law to be provided with re-  
16 spect to gifts and contributions made by the  
17 owner or operator.

18 “(J) Any information that is required by  
19 State or Federal law to be provided with re-  
20 spect to compliance by the owner or operator  
21 with the State solid waste management plan.

22 “(4) PRIOR NOTIFICATION.—Prior to taking  
23 formal action with respect to granting authorization  
24 to receive out-of-State municipal solid waste pursu-

1 ant to a new host community agreement under this  
2 subsection, an affected local government shall—

3 “(A) notify the State, contiguous local gov-  
4 ernments, and any contiguous Indian tribes;

5 “(B) publish notice of the action in a  
6 newspaper of general circulation at least 15  
7 days before holding a hearing under subpara-  
8 graph (C), except where State law provides for  
9 an alternate form of public notification; and

10 “(C) provide an opportunity for public  
11 comment in accordance with State law, includ-  
12 ing at least 1 public hearing.

13 “(5) SUBSEQUENT NOTIFICATION.—Promptly,  
14 but not later than 90 days after an authorization is  
15 granted pursuant to a new host community agree-  
16 ment under this subsection, the affected local gov-  
17 ernment shall notify the Governor, contiguous local  
18 governments, and any contiguous Indian tribes of  
19 such authorization.

20 “(d) EXEMPTION FOR WASTE NOT SUBJECT TO  
21 HOST COMMUNITY AGREEMENTS.—

22 “(1) IN GENERAL.—Out-of-State municipal  
23 solid waste received at a landfill or incinerator shall  
24 be exempt from the presumptive ban contained in  
25 subsection (a) if the owner or operator of the landfill



1 or incinerator provides either of the following to the  
2 State in which the landfill or incinerator is located  
3 and to the affected local government:

4 “(A) PERMIT.—Information establishing  
5 that, before the date of the enactment of this  
6 section, the owner or operator of the landfill or  
7 incinerator has received a State permit specifi-  
8 cally authorizing the owner or operator to ac-  
9 cept, at the landfill or incinerator, such out-of-  
10 State municipal solid waste. This subparagraph  
11 shall be effective only if the owner or operator  
12 complies with all of the terms and conditions of  
13 the permit and notifies the affected local gov-  
14 ernment of the permit as soon as practicable  
15 but not later than 90 days after the date of en-  
16 actment of this section.

17 “(B) DOCUMENTED SHIPMENTS.—Infor-  
18 mation establishing that during 1993, the land-  
19 fill or incinerator received shipments of out-of-  
20 State municipal solid waste. Such information  
21 shall be in such documented form as will result  
22 in criminal penalties under State law in case of  
23 false or misleading information. Such informa-  
24 tion shall include information about the date of

1 shipment, place of origin of such waste, and the  
2 type of such waste.

3 “(2) COMPLIANCE WITH CERTAIN LAWS RE-  
4 QUIRED.—The exemption under this subsection shall  
5 not apply to a landfill or incinerator in operation on  
6 the date of the enactment of this section if the State  
7 determines that the landfill or incinerator was not in  
8 compliance as of such date with applicable Federal  
9 and State laws and regulations relating to facility  
10 operation and design and—

11 “(A) in the case of landfills, facility loca-  
12 tion standards, leachate collection standards,  
13 groundwater monitoring standards, and stand-  
14 ards for financial assurance and for closure and  
15 post-closure and corrective action,

16 “(B) in the case of incinerators, the appli-  
17 cable requirements of section 120 of the Clean  
18 Air Act (42 U.S.C. 7429), and

19 “(C) that such noncompliance constitutes a  
20 threat to human health or the environment.

21 “(3) AMOUNT LIMITATION ON PARAGRAPH  
22 (1)(B) EXEMPTION.—The amount of out-of-State mu-  
23 nicipal solid waste exempt under paragraph (1)(B)  
24 from the presumptive ban contained in subsection

1 (a) shall be determined as provided in this para-  
2 graph.

3 “(A) STATES NOT EXERCISING RATCHET  
4 AUTHORITY UNDER SUBSECTION (f).—In States  
5 which do not establish a limit on out-of-State  
6 municipal solid waste under subsection (f) (re-  
7 lating to the ratchet authority), the amount of  
8 exempt out-of-State municipal solid waste shall  
9 be determined under clause (i) or (ii).

10 “(i) WASTE UNDER CONTRACT.—For  
11 out-of-State municipal solid waste received  
12 at the landfill or incinerator under a con-  
13 tract in effect during 1993, the exemption  
14 under paragraph (1)(B) shall apply only to  
15 the amount of out-of-State municipal solid  
16 waste specified in the contract and only for  
17 the longer of the following periods:

18 “(I) The life of the contract.

19 “(II) The period ending 3 years  
20 after the enactment of this section.

21 If the contract expires prior to the end of  
22 the 3-year period, the exempt amount shall  
23 be an annual amount equal to the average  
24 annual amount of out-of-State municipal

1 solid waste received at the landfill or incin-  
2 erator over the life of the contract.

3 “(ii) SPOT WASTE.—For out-of-State  
4 municipal solid waste received at the land-  
5 fill or incinerator in the absence of a con-  
6 tract in effect during 1993, the exemption  
7 under paragraph (1)(B) shall not be lim-  
8 ited in amount under this subsection but  
9 shall apply to the receipt of out-of-State  
10 municipal solid waste only for a period  
11 ending 3 years after the enactment of this  
12 section.

13 “(B) STATES EXERCISING RATCHET AU-  
14 THORITY UNDER SUBSECTION (f).—In States  
15 which establish a limit on out-of-State munici-  
16 pal solid waste under subsection (f) (relating to  
17 the ratchet authority), the exemption under  
18 paragraph (1)(B) shall be limited to the same  
19 amounts and time periods as specified in sub-  
20 paragraph (A) except that in lieu of the 3-year  
21 period referred to in subparagraph (A) there  
22 shall be substituted a period ending January 1,  
23 2001.

24 “(4) AVAILABILITY OF DOCUMENTATION.—The  
25 owner or operator of a landfill or incinerator receiv-

1 ing waste pursuant to an exemption under this sub-  
2 section shall make available for inspection by the  
3 public in the affected local community, a copy of the  
4 documentation referred to in paragraph (1). The  
5 owner or operator may omit any proprietary infor-  
6 mation contained in contracts, but shall ensure that  
7 at least the following information is apparent: the  
8 volume of out-of-State municipal solid waste to be  
9 received, the source of the waste, and the duration  
10 of the contract.

11 “(5) DENIED OR REVOKED PERMITS.—A land-  
12 fill or incinerator may not receive for disposal or in-  
13 cineration out-of-State municipal solid waste pursu-  
14 ant to an exemption under paragraph (1)(B) if the  
15 operating permit or license for the landfill or incin-  
16 erator (or renewal thereof) was denied or revoked by  
17 the appropriate State agency before the date of en-  
18 actment of this section unless such permit or license  
19 (or renewal) has been reinstated as of such date of  
20 enactment.

21 “(6) WASTE WITHIN BI-STATE METROPOLITAN  
22 STATISTICAL AREAS.—A landfill or incinerator in a  
23 State shall be exempt from the presumptive ban set  
24 forth in subsection (a) if the out-of-State waste is  
25 generated within, and the landfill or incinerator is

1 located within, the same bi-State level A metropoli-  
2 tan statistical area (as defined by the Office of Man-  
3 agement and Budget and as listed by the Office of  
4 Management and Budget as of the date of enact-  
5 ment of this section) which contains two contiguous  
6 major cities each of which is in a different State.

7 “(7) EXEMPTION UNDER THIS SUBSECTION  
8 SUBJECT TO FREEZE OR RATCHET.—The authority  
9 of a landfill or incinerator to receive out-of-State  
10 municipal solid waste pursuant to an exemption  
11 under this subsection may be limited by a State pur-  
12 suant to either subsection (e) (relating to the freeze)  
13 or subsection (f) (relating to the ratchet).

14 “(e) AUTHORITY OF STATE TO FREEZE CERTAIN  
15 EXEMPT OUT-OF-STATE MUNICIPAL SOLID WASTE.—

16 “(1) FREEZE.—A State in which a landfill or  
17 incinerator is located may establish a limit, as pro-  
18 vided in this subsection, on the amount of out-of-  
19 State municipal solid waste received annually for  
20 disposal at each landfill or incinerator in the State  
21 pursuant to an exemption under subsection  
22 (d)(1)(B), or the affected local government may  
23 limit the amount of out-of-State municipal solid  
24 waste received annually for disposal at a particular  
25 landfill or incinerator pursuant to an exemption

1 under subsection (d)(1)(B). For any landfill or in-  
2 cinerator, a limit under this subsection shall be in  
3 lieu of any limit under subsection (f) (relating to the  
4 ratchet).

5 “(2) LIMITATION AMOUNT.—For any landfill or  
6 incinerator that commenced receiving documented  
7 out-of-State municipal solid waste before the date of  
8 enactment of this section, any limitation under para-  
9 graph (1) for any year shall be equal to the amount  
10 of out-of-State municipal solid waste received for  
11 disposal at the landfill or incinerator concerned dur-  
12 ing calendar year 1993. The documentation referred  
13 to in this subparagraph shall be such as would result  
14 in criminal penalties in case of false or misleading  
15 information. Such documentation shall include the  
16 amount of waste received, place of origin, including  
17 the identity of the generator, date of shipment, and  
18 type of waste.

19 “(3) NO DISCRIMINATION.—In establishing a  
20 limitation under this subsection, a State shall act in  
21 a consistent manner that does not discriminate  
22 against any shipments of out-of-State municipal  
23 solid waste on the basis of State of origin.

24 “(4) EFFECT ON OTHER LAWS.—Nothing in  
25 this subsection shall be interpreted or construed to

1 have any effect on any State law relating to con-  
2 tracts.

3 “(f) RATCHET.—

4 “(1) AUTHORITY.—Any State (hereinafter in  
5 this subsection referred to as an ‘importing State’)  
6 that imported more than 750,000 tons of out-of-  
7 State municipal solid waste in 1993 may establish a  
8 limit under this subsection on the amount of out-of-  
9 State municipal solid waste received pursuant to the  
10 authority of subsection (d)(1)(B) for disposal at  
11 landfills and incinerators in the importing State. A  
12 limit under this paragraph shall be in lieu of any  
13 limit imposed under subsection (e) (relating to the  
14 freeze). A limit under this paragraph may be im-  
15 posed only if each of the following requirements are  
16 met:

17 “(A) The importing State shall notify the  
18 Governor of the exporting State or States of the  
19 proposed limit at least 12 months before im-  
20 position of the limit.

21 “(B) The importing State shall notify the  
22 Governor of the exporting State or States of the  
23 proposed limit at least 90 days before enforce-  
24 ment of the limit.



1           “(C) The percentage reduction in the  
 2           amount of out-of-State municipal solid waste  
 3           which is received at each facility pursuant to  
 4           subsection (d)(1)(B) in the importing State at  
 5           which a limit may be established under this  
 6           subsection shall be uniform for all such facili-  
 7           ties.

8           “(2) PERCENTAGE.—The limit established  
 9           under this subsection shall be a percentage of the  
 10          amount of out-of-State municipal solid waste gen-  
 11          erated in the exporting State during calendar year  
 12          1993 and received at facilities in the importing State  
 13          in which a limit is established under this subsection.  
 14          For any calendar year after 1996, the percentage  
 15          shall be as specified in the following table:

<b>“Calendar year:</b>	<b>Applicable Percentage:</b>
1997 .....	85
1998 .....	75
1999 .....	65
2000 .....	55
after 2000 .....	50.

16          “(g) NEEDS DETERMINATION.—Any comprehensive  
 17          solid waste management plan approved under Federal or  
 18          State law and any implementation of such plan through  
 19          the State permitting process may take into account local  
 20          and regional needs for solid waste disposal capacity. An  
 21          affected local government may make a determination that  
 22          there is no local or regional need for a new landfill or in-

1 incinerator or major modification creating additional capac-  
2 ity at an existing facility in the area under the jurisdiction  
3 of the affected local government. Such determination shall  
4 be based on a finding that the proposed facility does not  
5 have a host community agreement or is inconsistent with  
6 the capacity needs established in the comprehensive solid  
7 waste management plan adopted by the affected local gov-  
8 ernment pursuant to State law. No comprehensive solid  
9 waste management plan may expressly prohibit the impor-  
10 tation of municipal solid waste from out of State.

11 “(h) IMPLEMENTATION AND ENFORCEMENT.—Any  
12 State may adopt such laws and regulations, not inconsis-  
13 tent with this section, as are necessary to implement and  
14 enforce this section, including provisions for penalties.

15 “(i) EFFECT ON INTERSTATE COMMERCE.—No State  
16 prohibition or limitation established as provided this sec-  
17 tion, no State planning and permitting process referred  
18 to in subsection (g), and no State law or regulation re-  
19 ferred to in subsection (h) shall be considered to impose  
20 an undue burden on interstate commerce or to otherwise  
21 impair, restrain, or discriminate against interstate com-  
22 merce.

23 “(j) ANNUAL STATE REPORT.—Each year the owner  
24 or operator of each landfill or incinerator receiving out-  
25 of-State municipal solid waste shall submit to the Gov-

1 error of the State in which the landfill or incinerator is  
2 located information specifying the amount of out-of-State  
3 municipal solid waste received for disposal during the pre-  
4 ceding year. Each year each such State shall publish and  
5 make available to the public, a report containing informa-  
6 tion on the amount of out-of-State municipal solid waste  
7 received for disposal in the State during the preceding  
8 year.

9 “(k) DEFINITIONS.—For purposes of this section:

10 “(1) AFFECTED LOCAL GOVERNMENT.—(A) Ex-  
11 cept as provided in subparagraphs (B) and (C), for  
12 any landfill or incinerator, the term ‘affected local  
13 government’ shall mean—

14 “(i) the public body authorized by State  
15 law to plan for the management of municipal  
16 solid waste, a majority of the members of which  
17 are elected officials, for the area in which the  
18 landfill or incinerator is located or proposed to  
19 be located, or

20 “(ii) if there is no such body created by  
21 State law, the elected officials of the city, town,  
22 township, borough, county, or parish exercising  
23 primary responsibility for the use of land on  
24 which the facility is located or proposed to be  
25 located.

1           “(B) In the case of host community agreements  
2 entered into before the convening of the 104th Con-  
3 gress, for any landfill or incinerator, the term shall  
4 mean either the public body described in clause (i)  
5 of subparagraph (A) or the elected officials of the  
6 city, town, township, borough, county, or parish ex-  
7 ercising primary responsibility for the use of land on  
8 which the facility is located or proposed to be lo-  
9 cated.

10           “(C) In the case of host community agreements  
11 entered into after the convening of the 104th Con-  
12 gress, but before the date of enactment of this sec-  
13 tion, for any landfill or incinerator, the term shall  
14 mean either the public body described in clause (i)  
15 of subparagraph (A) or, with the approval of such  
16 public body, the elected officials of the city, town,  
17 township, borough, county, or parish exercising pri-  
18 mary responsibility for the use of land on which the  
19 facility is located or proposed to be located.

20           “(D) Two or more Governors of adjoining  
21 States may use the authority provided in section  
22 1005(b) to enter into an agreement under which  
23 contiguous units of local government located in each  
24 of the adjoining States may act jointly as the af-  
25 fected local government for purposes of providing

1 authorization under subsection (a) for municipal  
2 solid waste generated in one of such counties and  
3 received for disposal or incineration in another.

4 “(2) HOST COMMUNITY AGREEMENT.—The  
5 term ‘host community agreement’ means a written,  
6 legally binding agreement, lawfully entered into be-  
7 tween an owner or operator of a landfill or inciner-  
8 ator and an affected local government that specifi-  
9 cally authorizes the landfill or incinerator to receive  
10 out-of-State municipal solid waste.

11 “(3) MUNICIPAL SOLID WASTE.—The term  
12 ‘municipal solid waste’ means all waste materials  
13 discarded for disposal by households, including sin-  
14 gle and multifamily residences, and hotels and mo-  
15 tels. The term also includes waste materials gen-  
16 erated by commercial, institutional, and industrial  
17 sources, to the extent such wastes are essentially the  
18 same as waste normally generated by households or  
19 were collected and disposed of with other municipal  
20 solid waste as part of normal municipal solid waste  
21 collection services, and regardless of when generated,  
22 would be considered conditionally exempt small  
23 quantity generator waste under section 3001(d). Ex-  
24 amples of municipal solid waste include food and  
25 yard waste, paper, clothing, appliances, consumer

1 product packaging, disposable diapers, office sup-  
2 plies, cosmetics, glass and metal food containers, ele-  
3 mentary or secondary school science laboratory  
4 waste, and household hazardous waste. Such term  
5 shall include debris resulting from construction, re-  
6 modeling, repair, or demolition of structures other  
7 than debris that is not otherwise commingled with  
8 other municipal solid waste and has been determined  
9 by the generator, to be contaminated. For purposes  
10 of determining whether any such debris is contami-  
11 nated, the generator shall conduct representative  
12 sampling and analysis of such debris, the results of  
13 which shall be submitted to the affected local gov-  
14 ernment for record keeping purposes only, unless not  
15 required by the affected local government. Any such  
16 debris that has been determined to be contaminated  
17 shall be disposed of in a landfill that meets, at a  
18 minimum, the requirements of this subtitle. The  
19 term does not include any of the following:

20 “(A) Any solid waste identified or listed as  
21 a hazardous waste under section 3001.

22 “(B) Any solid waste, including contami-  
23 nated soil and debris, resulting from—

24 “(i) a response action taken under  
25 section 104 or 106 of the Comprehensive

1 Environmental Response, Compensation,  
2 and Liability Act (42 U.S.C. 9604 or  
3 9606),

4 “(ii) a response action taken under a  
5 State law with authorities comparable to  
6 the authorities of section 104 or 106, or

7 “(iii) a corrective action taken under  
8 this Act.

9 “(C) Recyclable materials that have been  
10 separated, at the source of the waste, from  
11 waste otherwise destined for disposal or that  
12 have been managed separately from waste des-  
13 tined for disposal, including scrap rubber to be  
14 used as a fuel source.

15 “(D) Materials and products returned  
16 from a dispenser or distributor to the manufac-  
17 turer or an agent of the manufacturer for cred-  
18 it, evaluation, and possible reuse.

19 “(E) Any solid waste that is—

20 “(i) generated by an industrial facil-  
21 ity; and

22 “(ii) transported for the purpose of  
23 treatment, storage, or disposal to a facility  
24 or unit thereof that is owned or operated  
25 by the generator of the waste or located on

1 property owned by the generator or a com-  
2 pany with which the generator is affiliated  
3 or the capacity of which is contractually  
4 dedicated exclusively to a specific generator  
5 so long as the disposal area complies with  
6 local and State land use and zoning regula-  
7 tions applicable to the disposal site.

8 “(F) Any medical waste that is segregated  
9 from or not mixed with solid waste.

10 “(G) Sewage sludge and residuals from  
11 any sewage treatment plant, including any sew-  
12 age treatment plant required to be constructed  
13 in the State of Massachusetts pursuant to any  
14 court order issued against the Massachusetts  
15 Water Resources Authority.

16 “(H) Combustion ash generated by re-  
17 source recovery facilities or municipal inciner-  
18 ators, or waste from manufacturing or process-  
19 ing (including pollution control) operations not  
20 essentially the same as waste normally gen-  
21 erated by households.

22 “(4) OUT-OF-STATE MUNICIPAL SOLID  
23 WASTE.—The term ‘out-of-State municipal solid  
24 waste’, means, with respect to any State, municipal  
25 solid waste generated outside of the State. The term



1 includes municipal solid waste generated outside of  
2 the United States.

3 “(5) RECYCLE AND RECYCLING.—The terms  
4 ‘recycle’ and ‘recycling’ mean—

5 “(A) any process which produces any ma-  
6 terial defined as ‘recycled’ under section 1004;  
7 and

8 “(B) any process by which materials are  
9 diverted, separated from, or separately man-  
10 aged from materials otherwise destined for dis-  
11 posal as solid waste, by collecting, sorting, or  
12 processing for use as raw materials or feed-  
13 stocks in lieu of, or in addition to, virgin mate-  
14 rials, including petroleum, in the manufacture  
15 of usable materials or products.

16 “(6) SPECIFIC AUTHORIZATION.—For purposes  
17 of this section, the term ‘specifically authorizes’ re-  
18 fers to an explicit authorization, contained in a host  
19 community agreement or permit, to import waste  
20 from outside the State. Such authorization may in-  
21 clude a reference to a fixed radius surrounding the  
22 landfill or incinerator which includes an area outside  
23 the State or a reference to ‘any place of origin’, ref-  
24 erence to specific places outside the State, or use of  
25 such phrases as ‘regardless of origin’ or ‘outside the

1 State'. The language for such authorization may  
 2 vary as long as it clearly and affirmatively states the  
 3 approval or consent of the affected local government  
 4 or State for receipt of municipal solid waste from  
 5 sources or locations outside the State from which the  
 6 owner or operator of a landfill or incinerator pro-  
 7 poses to import it. The term shall not include gen-  
 8 eral references to the receipt of waste from outside  
 9 the jurisdiction of the affected local government.'".

10 (b) TABLE OF CONTENTS.—The table of contents of  
 11 the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is  
 12 amended by adding after the item relating to section 4010  
 13 the following new item:

"Sec. 4011. Receipt and disposal of out-of-State municipal solid waste.'".

## 14 **TITLE II—FLOW CONTROL**

### 15 **SEC. 201. CONGRESSIONAL AUTHORIZATION OF STATE AND** 16 **LOCAL MUNICIPAL SOLID WASTE FLOW CON-** 17 **TROL.**

18 (a) AMENDMENT OF SUBTITLE D.—Subtitle D of the  
 19 Solid Waste Disposal Act is amended by adding after sec-  
 20 tion 4011 the following new section:

1 **“SEC. 4012. CONGRESSIONAL AUTHORIZATION OF STATE**  
2 **AND LOCAL GOVERNMENT CONTROL OVER**  
3 **MOVEMENT OF MUNICIPAL SOLID WASTE**  
4 **AND RECYCLABLE MATERIALS.**

5 “(a) FLOW CONTROL AUTHORITY FOR FACILITIES  
6 DESIGNATED AND IN OPERATION AS OF MAY 15, 1994.—  
7 Any State or political subdivision thereof is authorized to  
8 exercise flow control authority to direct the movement of  
9 municipal solid waste, and recyclable materials voluntarily  
10 relinquished by the owner or generator thereof, to particu-  
11 lar waste management facilities, or facilities for recyclable  
12 materials, designated and in operation as of May 15,  
13 1994, if each of the following conditions are met:

14 “(1) The waste and recyclable materials are  
15 generated within the jurisdictional boundaries of  
16 such State or political subdivision, as the case may  
17 be, determined as of May 15, 1994.

18 “(2) Such flow control authority is imposed  
19 through the adoption or execution of a law, ordi-  
20 nance, regulation, resolution, or other legally binding  
21 provision or official act of the State or political sub-  
22 division that—

23 “(A) was in effect on May 15, 1994, or

24 “(B) would have been in effect on that  
25 date but for the issuance of an injunction or  
26 other order by a court based on a ruling that

1           such law, ordinance, regulation, resolution, or  
2           other legally binding provision or official act  
3           violated the Commerce Clause of the United  
4           States Constitution.

5   The authority of this subsection shall only permit the exer-  
6   cise of flow control authority for the specific classes or  
7   categories of municipal solid waste and voluntarily relin-  
8   quished recyclable materials to which flow control author-  
9   ity was applicable on May 15, 1994, or immediately before  
10  the effective date of an injunction or other court order  
11  referred to in subparagraph (B) and only if the facility  
12  concerned received municipal solid waste in those classes  
13  or categories prior to May 15, 1994, or the effective date  
14  of such injunction or other court order.

15       “(b) COMMITMENT TO DESIGNATION.—Any State or  
16  political subdivision thereof is authorized to exercise flow  
17  control authority to direct the movement of municipal  
18  solid waste, and recyclable materials voluntarily relin-  
19  quished by the owner or generator thereof, to particular  
20  waste management facilities, or facilities for recyclable  
21  materials, not covered by subsection (a), if the condition  
22  of paragraph (1) of subsection (a) is met and each of the  
23  following conditions are also met:

24           “(1) Such flow control authority is imposed  
25       through the adoption or execution of a law, ordi-

1 nance, regulation, resolution, or other legally binding  
2 provision or official act of the State or political sub-  
3 division that specifically provides for flow control au-  
4 thority for municipal solid waste or recyclable mate-  
5 rials, or both, generated within its boundaries and  
6 that—

7 “(A) was in effect on May 15, 1994, or

8 “(B) would have been in effect on that  
9 date but for the issuance of an injunction or  
10 other order by a court referred to in subsection  
11 (a)(2)(B).

12 “(2) The State or political subdivision has  
13 taken one or more of the following actions prior to  
14 May 15, 1994, to commit to the designation of such  
15 waste management facilities or facilities for recycla-  
16 ble materials:

17 “(A) The State or political subdivision has  
18 obtained all required permits for the construc-  
19 tion of the facility concerned.

20 “(B) The State or political subdivision has  
21 executed contracts for the construction of such  
22 facility.

23 “(C) The State or political subdivision has  
24 presented bonds for sale specifically to provide  
25 revenue for the construction of such facility.

1           “(D) The State or political subdivision has  
2 submitted to the appropriate regulatory agen-  
3 cies administratively complete permit applica-  
4 tions for the construction and operation of such  
5 facility and within 30 months after such permit  
6 is issued the State has issued all bonds nec-  
7 essary to provide revenue for the construction  
8 of such facility.

9           “(E) Designation of the solid waste man-  
10 agement facility or recycling facility was com-  
11 pleted by May 15, 1994, or would have been  
12 completed by May 15, 1994, but for any notice  
13 and comment period mandated under State law  
14 for the designation.

15           “(F) The State or political subdivision has  
16 executed a contract or agreement (otherwise  
17 known as a ‘put or pay agreement’) that obli-  
18 gates or otherwise requires the State or political  
19 subdivision to deliver a minimum quantity of  
20 flow controllable solid waste or recyclable mate-  
21 rials to a waste management facility or facility  
22 for recyclable materials and that obligates or  
23 otherwise requires the State or political subdivi-  
24 sion to pay for that minimum quantity of mu-  
25 nicipal solid waste or recyclable materials even

1           if the stated minimum quantity of such waste  
2           or recyclable materials is not delivered within a  
3           required timeframe.

4 This subsection shall only permit the exercise of flow con-  
5 trol authority for the specific classes or categories of mu-  
6 nicipal solid waste or voluntarily relinquished recyclable  
7 materials clearly identified by the State or political sub-  
8 division prior to May 15, 1994. If specific classes or cat-  
9 egories of municipal solid waste or recyclable materials are  
10 not clearly identified, the authority of this section shall  
11 apply only to municipal solid waste generated by house-  
12 holds.

13       “(c) DURATION OF SUBSECTION (a) FLOW CONTROL  
14 AUTHORITY.—Flow control authority may be exercised  
15 pursuant to subsection (a) for any facility or facilities only  
16 until the later of the following:

17       “(1) The expiration date of a contract between  
18       the State or political subdivision and any other per-  
19       son regarding the movement or delivery of the mu-  
20       nicipal solid waste or recyclable materials concerned.  
21       Such expiration date shall be determined based upon  
22       the contract provisions in effect on May 15, 1994.

23       “(2) The expiration date of any State or munic-  
24       ipal bond issued to pay the capital costs of a waste  
25       management facility or facility for recyclable mate-

1       rials, whether it is the sole facility to which solid  
2       waste or recyclable materials have been directed or  
3       one of several facilities owned or operated by a mu-  
4       nicipality from which solid waste revenue was  
5       pledged in order to obtain bond financing. Such ex-  
6       piration date shall be determined based upon the  
7       bond provisions in effect on May 15, 1994, except  
8       that in the case of an environmental retrofit for  
9       which an additional bond is issued during the term  
10      of the bond in effect on May 15, 1994, such expira-  
11      tion date shall be the earlier of—

12               “(A) the expiration date of the additional  
13              bond, or

14               “(B) the date 25 years after the issuance  
15              of the additional bond.

16              “(3) The expiration of the useful life of a facil-  
17      ity in existence as of May 15, 1994 (not including  
18      expansions).

19      “(d) DURATION OF SUBSECTION (b) FLOW CONTROL  
20      AUTHORITY.—Flow control authority may be exercised  
21      pursuant to subsection (b) only until the expiration date  
22      of the original bond issued to pay the capital costs of such  
23      facility, except that flow control authority may be exer-  
24      cised pursuant to a demonstration under subparagraph  
25      (F) of subsection (b)(2) for any facility only until expira-



1 tion date of the contract referred to in such subparagraph.  
2 Such expiration date shall be determined based upon the  
3 contract provisions as in effect on May 15, 1994.

4 “(e) VOLUNTARY OPT-OUT FOR GENERATORS AND  
5 TRANSPORTERS.—Notwithstanding any other provision of  
6 this section, upon the request of any generator of munici-  
7 pal solid waste or recyclable materials affected by this sec-  
8 tion, the State or political subdivision may authorize the  
9 diversion of all or a portion of the solid waste or recyclable  
10 materials generated by the generator making such request  
11 to a solid waste management facility, or facility for recy-  
12 clable materials, other than the facility or facilities origi-  
13 nally designated by the political subdivision.

14 “(f) MANDATORY OPT-OUT FOR GENERATORS AND  
15 TRANSPORTERS.—Notwithstanding any other provision of  
16 this section, no State or local government may require any  
17 generator or transporter of municipal solid waste or recy-  
18 clable materials to transport such waste or materials, or  
19 deliver such waste or materials for transportation, to any  
20 site listed on the National Priorities List established under  
21 the Comprehensive Environmental Response, Compensa-  
22 tion, and Liability Act of 1980 unless such State or local  
23 government has indemnified the generator or transporter  
24 against all liability under that Act with respect to such  
25 waste or materials.

1       “(g) FLOW CONTROL STUDY.—The Administrator,  
2 in cooperation with the National Academy of Public Ad-  
3 ministration and the Secretary of the Treasury, shall con-  
4 duct a study of the extent to which the decision of the  
5 United States Supreme Court in *C&A Carbone v.*  
6 *Clarkstown, New York* has affected the ability of public and  
7 private agencies and entities to secure or retain financing  
8 for solid waste management facilities or services. Such  
9 study shall address whether such decision is likely to inter-  
10 fere with the implementation of State solid waste manage-  
11 ment plans, and whether such decision is likely to affect  
12 recycling or composting. The Administration shall submit  
13 a report on such study to the Congress, together with rec-  
14 ommendations for needed legislation, if any, not later than  
15 March 31, 1996.

16       “(h) EFFECT ON EXISTING LAWS AND CON-  
17 TRACTS.—

18               “(1) ENVIRONMENTAL LAWS.—Nothing in this  
19 section shall be interpreted or construed to have any  
20 effect on any other law relating to the protection of  
21 human health and the environment, or the manage-  
22 ment of municipal solid waste or recyclable mate-  
23 rials.

24               “(2) STATE LAW.—Nothing in this section shall  
25 be interpreted to authorize a political subdivision to

1 exercise the flow control authority granted by this  
2 section in a manner inconsistent with State law.

3 “(3) OWNERSHIP OF RECYCLABLE MATE-  
4 RIALS.—Nothing in this section shall authorize any  
5 State or political subdivision to require any genera-  
6 tor or owner of recyclable materials to transfer any  
7 recyclable materials to such State or political sub-  
8 division, nor shall prohibit any persons from selling,  
9 purchasing, accepting, conveying, or transporting  
10 any recyclable materials, unless the generator or  
11 owner voluntarily makes such recyclable materials  
12 available to the State or political subdivision and re-  
13 linquishes any rights to, or ownership of, such recy-  
14 clable materials.

15 “(i) FACILITY EXPANSIONS.—Nothing in this sub-  
16 section (a) shall authorize the exercise of flow control au-  
17 thority by a State or political subdivision to direct munici-  
18 pal solid waste or recyclable materials to any unit of a  
19 facility owned by any person if the construction of such  
20 unit is commenced after May 15, 1994, unless—

21 “(1) such unit is on land owned by such person  
22 on May 15, 1994;

23 “(2) in the case of any State or political sub-  
24 division which, on May 15, 1994, required zoning for  
25 solid waste management or the management of recy-

1        clable materials, the land on which such unit is lo-  
2        cated was zoned on May 15, 1994, for solid waste  
3        management or the management of recyclable mate-  
4        rials;

5            “(3) the unit is contiguous to one or more other  
6        units for which flow control authority may be exer-  
7        cised under subsection (a), the construction of which  
8        commenced on or before May 15, 1994;

9            “(4) the capacity represented by such unit was  
10       identified as of May 15, 1994, in the solid waste  
11       management plan for such facility; and

12           “(5) the maximum annual capacity of the facil-  
13       ity to receive municipal solid waste or recyclable ma-  
14       terials does not increase.

15        “(j) ADDITIONAL AUTHORITY FOR AREAS WITH  
16       PRE-1984 FLOW CONTROL.—Notwithstanding anything  
17       to the contrary in this section, until 30 years after the  
18       date of enactment of this section, a State or political sub-  
19       division of a State that, on or before January 1, 1984,  
20       adopted regulations under a State law that required or  
21       directed the transportation, management, or disposal of  
22       solid waste from residential, commercial, or institutional,  
23       or industrial sources (as defined under State law) to spe-  
24       cifically identified waste management facilities, and ap-

1 plied those regulations to every political subdivision of the  
2 State, may—

3 “(1) exercise flow control authority over all  
4 classes and categories of solid waste that were sub-  
5 ject to flow control on May 15, 1994; and

6 “(2) exercise flow control authority over such  
7 solid waste from any existing or future waste man-  
8 agement facility to any other existing or future  
9 waste management facility.

10 “(k) FACILITIES NOT QUALIFIED FOR FLOW CON-  
11 TROL.—No flow control authority may be exercised under  
12 the provisions of this section to direct solid waste or recy-  
13 clable materials to any facility pursuant to an ordinance  
14 if—

15 “(1) the ordinance was determined to be uncon-  
16 stitutional by a State or Federal court after May 15,  
17 1994, and before the date of the enactment of this  
18 section;

19 “(2) the facility is located over a sole source aq-  
20 uifer and within one mile of a coastal zone; and

21 “(3) the facility is not fully permitted and oper-  
22 ating in complete official compliance with all Fed-  
23 eral, State, and local environmental regulations.

24 “(l) SAVINGS CLAUSE.—Nothing in this section is in-  
25 tended to prevent any State or political subdivision from

1 franchising, licensing, or contracting for solid waste collec-  
2 tion, processing, or disposal.

3 “(m) DEFINITIONS.—For the purposes of this sec-  
4 tion—

5 “(1) DESIGNATE; DESIGNATION.—The terms  
6 ‘designate’, ‘designated’, ‘designating’, and ‘designa-  
7 tion’ mean a requirement of a State or political sub-  
8 division, and the act of a State or political subdivi-  
9 sion, individually or collectively, to require that all or  
10 any portion of the municipal solid waste or recyc-la-  
11 ble materials that is generated within the boundaries  
12 of the State or any political subdivision be delivered  
13 to one or more waste management facilities or facili-  
14 ties for recyclable materials identified by the State  
15 or political subdivision.

16 “(2) ENVIRONMENTAL RETROFIT.—The term  
17 ‘environmental retrofit’ means construction or recon-  
18 struction at a waste management facility or facility  
19 for recyclable materials that is mandated in order to  
20 comply with Federal environmental law (or a State  
21 requirement adopted pursuant to a Federal environ-  
22 mental law) and which requires a capital expendi-  
23 ture.

24 “(3) FLOW CONTROL AUTHORITY.—The term  
25 ‘flow control authority’ means the authority to con-

1        trol the movement of municipal solid waste or volun-  
2        tarily relinquished recyclable materials and direct  
3        such solid waste or voluntarily relinquished recycla-  
4        ble materials to one or more designated waste man-  
5        agement facilities or facilities for recyclable mate-  
6        rials within the boundaries of a State or within the  
7        boundaries of a political subdivision of a State, as in  
8        effect on May 15, 1994.

9            “(4) MUNICIPAL SOLID WASTE.—The term  
10        ‘municipal solid waste’ means any solid waste gen-  
11        erated by the general public or by households, in-  
12        cluding single residences and multifamily residences,  
13        and from commercial, institutional, and industrial  
14        sources, to the extent such waste is essentially the  
15        same as waste normally generated by households or  
16        was collected and disposed of with other municipal  
17        solid waste as part of normal municipal solid waste  
18        collection services, consisting of paper, wood, yard  
19        waste, plastics, leather, rubber, and other combus-  
20        tible materials and noncombustible materials such as  
21        metal and glass, including residue remaining after  
22        recyclable materials have been separated from waste  
23        destined for disposal, and including waste material  
24        removed from a septic tank, septage pit, or cesspool

1 (other than from portable toilets), except that the  
2 term does not include any of the following:

3 “(A) Any waste identified or listed as a  
4 hazardous waste under section 3001 of this Act  
5 or waste regulated under the Toxic Substances  
6 Control Act.

7 “(B) Any waste, including contaminated  
8 soil and debris, resulting from response taken  
9 under section 104 or 106 of the Comprehensive  
10 Environmental Response, Compensation, and  
11 Liability Act of 1980 or any corrective action  
12 taken under this Act.

13 “(C) Construction and demolition debris.

14 “(D) Medical waste listed in section 11002  
15 of this Act.

16 “(E) Industrial waste generated by manu-  
17 facturing or industrial processes, including  
18 waste generated during scrap processing and  
19 scrap recycling.

20 “(F) Recyclable materials.

21 “(G) Sludge.

22 “(5) RECYCLE AND RECYCLING.—The terms  
23 ‘recycle’ and ‘recycling’ mean—



1           “(A) any process which produces any ma-  
2           terial defined as ‘recycled’ under section 1004;  
3           and

4           “(B) any process by which materials are  
5           diverted, separated from, or separately man-  
6           aged from materials otherwise destined for dis-  
7           posal as solid waste, by collecting, sorting, or  
8           processing for use as raw materials or feed-  
9           stocks in lieu of, or in addition to, virgin mate-  
10          rials, including petroleum, in the manufacture  
11          of usable materials or products.

12          “(6) RECYCLABLE MATERIALS.—The term ‘re-  
13          cyclable materials’ means any materials that have  
14          been separated from waste otherwise destined for  
15          disposal (either at the source of the waste or at  
16          processing facilities) or that have been managed sep-  
17          arately from waste destined for disposal, for the pur-  
18          pose of recycling, reclamation, composting of organic  
19          materials such as food and yard waste, or reuse  
20          (other than for the purpose of incineration). Such  
21          term includes scrap rubber to be used as a fuel  
22          source. Materials shall be deemed ‘recyclable mate-  
23          rials’ for the purpose of subsection (a) only if the  
24          generator or owner of the materials voluntarily made  
25          the materials available to the State or political sub-

1 division (or the designee of the State or political  
 2 subdivision) and relinquished any rights to, or own-  
 3 ership of, such materials, and the State or political  
 4 subdivision (or such designee) assumes such rights  
 5 to, or ownership of, such materials.

6 “(7) WASTE MANAGEMENT FACILITY.—The  
 7 term ‘waste management facility’ means any facility  
 8 for separating, storing, transferring, treating, proc-  
 9 essing, combusting, or disposing of municipal solid  
 10 waste.”.

11 (b) TABLE OF CONTENTS.—The table of contents for  
 12 subtitle D of the Solid Waste Disposal Act is amended  
 13 by adding the following new item after the item relating  
 14 to section 4011:

“Sec. 4012. Congressional authorization of State and local municipal solid waste  
 flow control.”.

○

HR 2323 IH——2

HR 2323 IH——3

HR 2323 IH——4